



**QORTI CIVILI
(SEZZJONI TAL-KUMMERC)**

**ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON**

Illum il-Hamis 18 ta` Marzu 2021

**Kawza Nru. 12
Rikors Nru. 29/2019 JZM**

**Dorita (Dolores Rita) Galea
[ID 205670(M)]**

kontra

1.

**Random Consulting Limited
(C 46368)**

u

2.

Mario Galea [ID 412169(M)]

Il-Qorti :

I. Preliminari

Rat ir-rikors li kien prezentat prezentat fit-8 ta` Novembru 2019 li jaqra hekk :-

1. PRELIMINARI

Illi r-rikorrenti qiegħda tipprezenta dan ir-rikors skont id-disposizzjonijiet tal-Artikolu 402(1) u (3) tal-Att dwar il-Kumpanniji [Kapitolu 386 tal-Ligijiet ta` Malta], peress illi l-affarijiet tal-kumpannija ntimata qed jitmexxew jew aktarx se jitmexxew b`mod li, jew li xi att jew ommissjoni tal-istess kumpannija kienu, huma jew aktarx se jkunu, oppressivi b`mod mhux gust diskriminatorji u ta` pregudizzju għar-rikorrenti bħala membru tal-istess kumpannija.

2. FATTI

Illi r-rikorrenti żzewġet lill-intimat Mario Galea fit-3 ta` Ottubru 1998 ("DOK : A") u r-regim matrimonjali tagħhom huwa dak tal-komunjoni tal-akkwisti billi l-operazzjoni ta` dan ir-regim qatt ma giet eskluza mill-konjuġi Galea.

Illi l-kumpannija ntimata Random Consulting Limited twaqqfet mill-intimat Mario Galea, u giet registrata nhar is-6 ta` Marzu 2009 ("DOK: B") b`1,500 sehem ordinarju kollha f`isem l-istess Mario Galea.

Illi l-intimat Mario Galea beda proceduri ta` separazzjoni personali kontra r-rikorrenti, u llum hemm il-kawza ta` separazzjoni numru 3/2017 pendenti bejniethom fl-Onorabbli Qorti Civili (sezzjoni familja) li ntavolat ir-rikorrenti fid-9 ta` Jannar 2017.

Illi l-intimat Mario Galea għandu diversi kumpanniji oħra li jiffurmaw parti mill-assi tal-komunjoni tal-akkwisti, u li huwa waqqaf kemm qabel u kif ukoll wara li beda l-proceduri ta` separazzjoni personali minn mar-rikorrenti, ossija :

(i) *Next Generation Games Ltd* li giet irregistrata gewwa l-British Virgin Islands fl-10 ta` Marzu 2010 b`50,000 sehem f` isem l-intimat Mario Galea - ta` min jghid li din il-kumpannija giet irregistrata ad insaputa tar-rikorrenti, li saret taf biha hafna snin wara, u dan minkejja li fiz-zmien li giet irregistrata l-istess kumpannija, ir-relazzjoni ta` bejn ir-rikorrenti u l-intimat zewgha kienet ghadha relattivament tajba.

(ii) *Random Consulting LLC* li giet registrata gewwa Nevada fl-IStati Uniti fis-27 ta` Marzu 2013 u hija wkoll gestita mill-intimat Mario Galea.

(iii) *BuiltinMT Limited (C77520)* li giet registrata nhar is-7 ta` Ottubru 2016 b`2,500 sehem ordinarju f` isem l-intimat Mario Galea.

(iv) *Blockchain (Malta) Hub Ltd (C 86612)* li giet registrata fl-4 ta` Gunju 2018 b`600 sehem ordinarju minn 1,200 f` isem l-intimat Mario Galea (bl-ishma l-ohra jinzammu minn zewg persuni terzi).

(v) *Random Systems International Ltd (C 87821)* li giet registrata fl-14 t`Awwissu 2018 b`1,199 sehem ordinarju tat-tip A minn 1,200 f` isem il-kumpannija ntimata *Random Consulting Limited*.

(vi) *Random Group Limited (C 90749)* li giet registrata fl-20 ta` Frar 2019 b`600 sehem ordinarju minn 1,200 f` isem l-intimat Mario Galea (bl-ishma l-ohra jinzammu minn zewg persuni terzi).

(vii) *Market Junction Ltd (C 92342)* li giet registrata fil-25 ta` Gunju 2019 b`2 ishma ordinarji minn 8,750 sehem tal-kapital mahrug, ossija issued share capital, f` isem l-intimat Mario Galea;

Illi r-rikorrenti accertat ruhha mill-ezistenza ta` dawn l-ahhar hames kumpanniji, ilkoll registrati Malta wara li l-intimat Mario Galea beda l-proceduri ta` separazzjoni personali minn maghha, biss permezz ta` provi mressqa waqt il-kawza ta` separazzjoni personali ta` bejnha u l-intimat zewgha.

Illi l-intimat Mario Galea mhux biss huwa l-azzjonist maggoritarju ta` dawn il-kumpanniji kollha nkluza l-kumpannija ntimata (barra Market Junction Ltd), izda huwa wkoll direttur u segretarju tal-istess kumpanniji [barra Blockchain (Malta) Hub Ltd u

Random Group Limited, li tagghom m`huwiex segretarju] u b`hekk minn dejjem kellu u ghad ghandu kontroll assolut tat-tmexxija tal-affarijiet tagghom, u ta`atti u ta`omissjonijiet tagghom.

Illi ricentement, ir-rikorrenti saret taf ukoll li l-intimat Mario Galea, flimkien ma` certi Marco Pace u Peter De Raedt, huwa fundatur ta`assocjazzjoni msejha "Gaming Standards Association", li hija registrata California, gewwa l-iStati Uniti, u li, fl-2017, ikkostitwixxa assocjazzjoni gewwa Malta maghrufa bhala "Gaming Standards Association Europe" flimkien mal-istess persuni.

Illi minn meta nbdeu il-proceduri tas-separazzjoni personali bejn ir-rikorrenti u l-intimat zewgha, l-istess intimat irrifjuta kategorikament li jaghti lir-rikorrenti xi forma ta` rendikont tat-tmexxija tal-affarijiet tal-kumpanniji tieghu jew mill-inqas tal-kontijiet annwali tal-istess kumpanniji, partikolarment tal-kumpanniji esteri Next Generation Games Ltd u Random Consulting LLC, li r-rikorrenti m`ghandha l-ebda mod kif tottjeni access ghalihom indipendentement.

Illi pero`, mill-provi prodotti sa issa fil-kawza ta` separazzjoni bejn ir-rikorrenti u l-intimat Mario Galea, u fuq parir espert li hadet l-istess rikorrenti, hija saret taf li l-unika wahda mill-kumpanniji registrati mill-istess intimat f`Malta li bhalissa u ghalissa ghandha xi valur tangibbli hija l-kumpannija ntimata Random Consulting Limited, mhux l-inqas billi, kif diga` suespost, l-ebda wahda mill-kumpanniji Maltin l-ohra kollha ma ilha rregistrata iktar minn tliet snin.

Illi ricentement ir-relazzjonijiet ta` bejn ir-rikorrenti u l-intimat zewgha komplew jiddeterjoraw u l-intimat sahsitra hedded lir-rikorrenti permezz ta` messaggi elettronici bil-Whatsapp li se jgib il-kumpanniji kollha formanti parti mill-komunjoni tal-akkwisti "fin-negattiv" ("DOK : C"). Kif suespost, m`hemm xejn xi jzomm lill-intimat Mario Galea milli jimmanipula l-kontijiet bankarji, u konsegwentement anke l-kontijiet annwali tal-kumpanniji ntimati, jekk huwa jiddeciedi li jaghmel hekk.

Illi r-rikorrenti m`hijiex midhla tal-gestjoni tal-istess kumpanniji u din it-theddida allarmata hafna, tant illi talbet u ottjeniet il-hrug tal-mandat t`inibizzjoni numru 171/2019 fl-ismijiet "Dolores Rita sive

Dorita Galea kontra Mario Galea” illi bis-sahha tieghu l-intimat Mario Galea gie mizmum milli jbiegh, inehhi, jittrasferixxi jew jiddisponi inter vivos sew b`titolu oneruz jew gratuwtu l-ishma registrati f`ismu fil-kumpanniji kollha msemija, milli jippartecipa f`riorganizzazzjoni jew ristrutturar tal-istess kumpanniji li permezz taghhom isir tnaqqis fil-valur tal-ishma tal-intimat jew b`xi mod iehor jintilfu d-drittijiet attinenti lill-istess ishma li dawn igawdu llum, u milli jaghmel xi dejn jew garanzija li tkun ta` piz fuq il-komunjoni tal-akkwisti, ossija fuq l-istess kumpanniji ntimati.

Illi dan pero` mhux necessarjament se jzomm lill-intimat Mario Galea milli jispostja n-negozju tal-kumpannija ntimata Random Consulting Limited favur il-kumpanniji u l-assocjazzjoni li rregistra fl-esteru, jew xi kumpannija ohra li r-rikorrenti ma tafx biha, jew li tista` tigi rregistrata mill-istess intimat fil-futur.

Illi l-intimat Mario Galea oppona ghall-hrug tal-mandat t`inibizzjoni u fir-risposta tieghu gie ddikjarat, fost affarjiet ohra li komplew jikkawzaw thassib lir-rikorrenti, li l-kumpanniji Blockchain (Malta) Hub Ltd u Random Group Limited “qeghdin fi stat ta` dissoluzzjoni”.

Illi kif suespost, il-kumpanniji Blockchain (Malta) Hub Ltd u Random Group Limited ilhom irregistrati biss ftit iktar minn sena u madwar sitt xhur rispettivament u ma jiggestihomx l-intimat Mario Galea wahdu, minkejja li huwa membru maggoritarju, u ghalhekk, kemm jekk din id-dikjarazzjoni hija veritiera, u kemm jekk m`hijiex, huwa evidenti li r-rikorrenti ghandha ragunijiet validi ghaliex tithasseb dwar kif l-intimat zewgha qieghed jiggestixxi assi li jiformaw parti mill-komunjoni tal-akkwisti, u ma` min qieghed jassocja ruhu biex jaghmel dan.

Illi inoltre r-rikorrenti ma tistax ma tikkummentax dwar il-mod kavelleresk li bih l-intimat zewgha baqa` juza assi monetarji li jiffurmaw parti mill-komunjoni tal-akkwisti, u kemm ilha fis-sehh il-kawza tas-separazzjoni ta` bejniethom mhux biss irregistra kumpanniji godda minghajr l-gharfien u wisq inqas il-kunsens taghha kif diga` suespost, izda anke ttrasferixxa ishma li diga` kellu f`ismu f`kumpanniji ohrajn lil terzi, u dan kif se jigi ppruvat fil-mori ta` dawn il-proceduri.

Illi ghal dawn ir-ragunijiet kollha huwa evidenti, u ghandu fil-kors tal-kawza jsir aktar evidenti, li l-affarijiet tal-kumpannija ntimata qed jitmexxew jew aktarx se jitmexxew, jew saru, qed isiru jew aktarx se jsiru xi attijiet jew ommissjonijiet tal-istess kumpannija li jkunu, oppressivi b`mod mhux gust diskriminatorji u ta` pregudizzju ghar-rikorrenti li ghandha nteress patrimonjali fir-rigward ta` sehem ugwali ndiviz tal-interita` tal-azzjonijiet fil-kumpannija intimata bhala appartenenti lill-komunjoni tal-akkwisti ezistenti bejnha u bejn l-intimat zewgha, u hemm lok ghall-ghoti tal-ordnijiet minn dina l-Onorabli Qorti skont if mahsub mid-disposizzjonijiet tal-Artikolu 402 tal-Kapitolu 386 tal-Ligijiet ta` Malta.

Illi ghalhekk kellu jigi pprezentat dan ir-rikors.

TALBA

Ghaldaqstant, ghar-ragunijiet fuq premessi, ir-rikorrenti titlob bir-rispett li, prevja kwalunkwe dikjarazzjoni ohra xierqa, necessarja u opportuna, din l-Onorabli Qorti joghgobha, ai termini tal-precitat Artikolu 402 tal-Att dwar il-Kumpanniji [Kapitolu 386 tal-Ligijiet ta` Malta] :

(i) Taghti dawk l-ordnijiet kollha li jidhrilha xierqa u opportuni sabiex pendente lite, jkun hemm tmexxija serja u xierqa tas-socjeta` ntimata kif del resto huwa rikjest mill-Att dwar il-Kumpanniji, u dana fl-interess tar-rikorrenti u tenut kont tal-interessi tal-kumpannija ntimata, inkluz, f`kaz li s-sitwazzjoni tal-kumpannija hekk tiggustifika, is-sospensjoni tal-funzjonijiet ezekuttivi tal-konvenut Mario Galea qua direttur taghha, u l-hatra t`amministratur provvizorju sabiex jaqdi dawk il-funzjonijiet u setghat dwar l-amministrazzjoni tal-beni jew in-negozju taghha.

(ii) Taghti dawk id-direttivi, provvedimenti u ordnijiet kollha li jidhrilha xierqa u opportuni sabiex tirregola t-tmexxija tal-affarijiet tal-kumpannija bil-ghan li l-precitati atti oppressivi, diskriminatorji u pregudizzjali jigu rrimedjati minnufih.

Bl-ispejjez kollha kontra l-intimati li minn issa huma ngunti ghas-subizzjoni.

Rat id-dokumenti li kienu prezentati mar-rikors.

Rat ir-risposta li pprezentaw l-intimati fis-17 ta` Dicembru 2019 li taqra :-

PRELIMINARI

1) *Illi din hija r-Risposta tal-esponenti Random Consulting Limited u ta` Mario Galea ghar-Rikors prezentat mill-precitat Dorita (Dolores Rita) Galea fit-8 ta` Novembru 2019 skont id-disposizzjonijiet tal-Artikolu 402(1) u (3) tal-Att dwar il-Kumpanniji (Kapitolu 386 tal-Ligijiet ta` Malta).*

2) *Illi huwa minnu li l-kumpannija ntimata Random Consulting Limited twaqqfet minn Mario Galea, u giet registrata nhar is-6 ta` Marzu 2009 b` 1,500 sehem ordinarju kollha f` isem l-istess Mario Galea. Jigi dikjarat ukoll illi Dorita (Dolores Rita) Galea m`ghandhiex u qatt ma kellha ishma fi hdan il-kumpannija Random Consulting Limited registrati f` isimha. Kopja tal-memorandum & Articles of Association taghha qed jigu hawn annessi u mmarkati bhala Dok. MG1.*

3) *Illi hekk kif ser jirrizulta, Dorita (Dolores Rita) Galea ma tistax tiqies bhala "membru" u m`hijix intitolata tadixxi lil dina l-Onorabbli Qorti ghall-finijiet kontemplat taht l-artikolu 402 tal-Att Dwar il-Kumpanniji - di fatti hi (Dorita (Dolores Rita) Galea) ma tirrapprezentax l-interessi ta` membru mejjet, ma tirrapprezentax persuna li ghandha jkunu ghaddew legittimament azzjonijiet fil-kumpannija b` wirt testamentarju jew mhux testamentarju, u lanqas ma tista` titqies bhala trustee kif imfisser fl-artikolu 127 tal-Att Dwar il-Kumpanniji li jkoll u azzjonijiet fil-kumpannija.*

4) *Illi inoltre, hekk kif ser jirrizulta, Dorita (Dolores Rita) Galea ma tistax tiqies bhala "membru" u ma hijix intitolata tadixxi lil dina l-Onorabbli Qorti ghall-finijiet kontemplati taht l-artikolu 402 tal-*

Att Dwar il-Kumpanniji anke peress illi ghal finijiet tal-artikolu 123(2), l-azzjonijiet fi hdan il-kumpannija Random Consulting Limited huma registrati f` isem Mario Galea u ghalhekk, a tenur tal-istess artikolu 123(2) huwa l-istess Mario Galea li ghandu ghal finijiet kollha jitqies vis-a-vis il-kumpannija li huwa il-"membru" tal-kumpannija ghal dawk l`1,500 sehem ordinarju kollha fi hdan il-kumpannija Random Consulting Limited.

5) Illi huwa minnu illi Dorita (Dolores Rita) Galea talbet u ottjeniet il-hrug tal-mandat t`inibizzjoni numru 171/2019 fl-ismijiet Dolores Rita sive Dorita.Galea kontra Mario Galea (vide l-anness Dok. MG2) illi bis-sahha tieghu l-esponent (hemm intimat) Mario Galea gie inibit u mizmum milli :

(a) Ibiegh, inehhi, jittrasferixxi jew jiddisponi inter vivos sew b` titolu oneruz jew gratuwitu l-ishma registrati f` ismu fis-segwenti socjetajiet kummercjali, billi tali ishma jiformow parti mill-komunjoni tal-akkwisti vigenti bejn il-kontendenti, ossla Random Consulting Limited (C 46368), BultinMT Limited (C 77520), Blockchain (Malta) Hub Ltd (C 86612), Random Systems International Limited (C 87821), Random Group Limited (C 90749), Morket Junction Ltd (C 92342), Next Generation Games Ltd (registrata gewwa l-British Virgin Islands bin-numru 1574797), u Random Consulting LLC (registrata gewwa Nevodo fl-Istati Uniti bin-numru 127880974);

(b) Jippartecipa f`ri-organizzazzjoni jew ristrutturar tal-imsemmija kumpaniji li permezz taghhom isir tnaqqis fil-volur tal-ishma tal-intimat jew b`xi mod iehor jintilfu d-drittijiet attinenti lill-istess ishma li dawn igawdu illum; u

(c) Milli jaghmel xi dejn jew garanzija li tkun ta` piz fuq il-komunjoni tal-akkwisti, ossija fuq is-socjetajiet kummercjali hawn fuq indikati, li taghhom l-intimat mhux biss huwa direttur, izda wkoll l-azzjonist maggoritarju u s-segretarju.

6) Illi r-rikorrenti Dorita (Dolores Rita) Galea tghid li hi m`hijjex midhla tal-gestjoni tal-istess kumpanniji. Dan m`hu minnu xejn. Kif taf ben tajjeb ir-rikorrenti u kif okkorrendo jigi ppruvat fil-mori ta`din il-procedura, in-negozju tal-esponent u tal-kumpannija intimata huwa wiehed serju u huwa bbazat biss fuq l-gherf u konoxxenza u expertise tal-esponent Mario Galea di proprio fin-

negozju ta` "gaming", liema negozju (kif okkorrendo jigi ppruvat) principalment jirrigwarda :

a. Hidma da parti tal-esponent stess bhala konsulent intern (in-house consultant) ghar-regolaturi ta` "gaming" f`diversi gurdizzjonijiet esteri.

b. Il-formazzjoni ta` kumpanniji fin-negozjuta` "gaming" ghal klijenti (terzi) li jitolbu ghal dan is-servizz u s-sussegwenti trasferiment tal-istess kumpanniji lit-tali klijenti malli dawn jkunu gew debitament iffurmati u r-rikjesti amministrattivi ghall-finijiet tal-licenzi mir-regolatur koncernat jkunu gew kompjuti.

7) Illi kif okkorrendo jigi ppruvat il-kumpannija intimata Random Consulting Limited dejjem giet gestita u tmexxiet b`mod serju. L-esponenti jichdu kategorikament li l-affarijiet tal-istess kumpannija intimata qed jitmexxew jew aktarx se jitmexxew, jew saru, qed isiru jew aktarx se jsiru xi attijiet jew omissjonijiet tal-istess kumpannija li jkunu, oppressivi b`mod mhux gust diskriminatorji u ta` pregudizzju.

8) Illi kif okkorrendo jigi ppruvat u kif jidher mill-Independent Auditor`s Reports formanti parti mill-Annual Financial statements li jigu (u dejjem gew) sottomessi lir-Registratur tal-Kumpanniji, l-affarijiet tal-istess kumpannija intimata Random Consulting Limited dejjem imxew b`serjeta` u b`korettezza, hekk kif dell`resto tezigi l-ligi. Inoltre, it-tmexxi tal-kumpannija Random Consulting Limited da parti tal-esponent Mario Galea qed iwassal mhux biss ghas-sempli soppurvivenza tal-istess kumpannija Random Consulting Limited izda s`issa dejjem sarraf gid ghall-istess kumpannija Random Consulting Limited.

9) Illi inoltre, kif okkorrendo jigi ppruvat, in vista tal-fatt li n-negozju tal-kumpannija intimata huwa bbazat biss fuq l-gherf u konoxxenza u expertise tal-esponent Mario Galea di proprio fin-negozju ta` "gaming", hija l-umli fhema tal-esponenti li l-mitlub sospensjoni tal-funzjonijiet ezekuttivi tal-esponent Mario Galea qua direttur taghha tista` biss twassal li l-kumpannija Random Consulting Limited tiflew in-negozju taghha u li jigi rrekat hsara konsiderevoli (u aktarx irreparabbli) bla bzonn lill-istess kumpannija Random Consulting Limited.

10) Illi ghalhekk, jekk tassew dina l-Onorabbli Qorti kellha taghmel xi ordni a tenur tal-Artikolu 402(3) tal-Att dwar il-Kumpanniji li biha jigu mittiefsa l-funzjonijiet eżekuttivi tal-esponent Mario Galea quo direttur tal-istess kumpannija Random Consulting Limited, allura tkun aktar ghaqlija li dina l-istess kumpannija tigi xolta milli tissokta b`mod li jista` biss jippregudika l-klijenti u d-dipendenti taghha (diretti u indiretti) u ma thallihex twettaq l-oggetti li ghalihom kienet giet iffurmata.

11) Illi huwa minnu Dorita (Dolores Rita) Galea u Mario Galea zzewgu fit-3 t` Ottubru 1998 u r-regim matrimonjali taghhom huwa dak tal-komunjoni tal-akkwisti billi l-operazzjoni ta` dan ir-regim qatt ma giet eskluza mill-konjugi Galea.

12) Illi huwa minnu li hemm pendenti kawza ta` separazzjoni pendenti quddiem l-Onorabbli Qorti Civili (Sezzjoni tal-Familja) bejn ir-rikorrenti Dorita (Dolores Rita) Galea u l-esponent Mario Galea (kawza numru 3/2017AL)` Din il-kawza fil-fatt tinsab differita ghas-seduta tal-11 ta` Frar 2020.

13) Illi huwa wisq ovvju li din il-vertenza twieldet (abbuzivament) mill-inkwiet matrimonjali ta` bejn Dorita (Dolores Rita) Galea u l-esponent li wassal ghal proceduri ta` separazzjoni personali gudizzjarja bejniethom li ghadha pendenti quddiem l-Onorabbli Qorti tal-Familja.

14) Illi fl-umli fehma tal-esponenti, inkwiet matrimonjali bejn konjugi ghandu jigi trattat fil-qorti kompetenti u inkwiet taz-zwieg bejn konjugi li wiehed minnhom ghandu azzjonijiet ta` kumpannija registrati f`ismu m`ghandux iservi bhala pretest ghall-azzjoni kontemplat taht l-Att dwar il-Kumpanniji (Kap 386 tal-Ligijiet ta` Malta). M`huwix korrett illi persuni jirrikorru ghal disposizzjonijiet tal-Att dwar il-Kumpanniji sabiex jinqdew b`ligi li tirregola s-socjetajiet kummercjali ghall-finita`kwistjoni li m`ghandhiex l-gheruq taghha fid-dritt socjetarju.

15) Illi l-indagni dwar jekk il-mod ta` kif konjugi tuza assi monetarji li allegatament jiffurmaw parti mill-komunjoni tal-akkwisti huwix jew le "kavelleresk", anke jekk dan jinvolvi r-registrazzjoni ta`

kumpanniji, m`ghandux iservi bhala pretest ghall-azzjoni kontemplat taht l-Att dwar il-Kumpanniji. Infatti, tant gharfet ir-Rikorrenti Dorita (Dolores Rita) Galea li l-kwistjoni kollha hija msejsa fuq l-inkwiet matrimonjali ta` bejnha u l-esponent Mario Galea li l-istess rikorrenti pprezentat il-precitat mandat ta` inibizzjoni numru 171/2019 fl-ismijiet "Dolores Rita sive Dorita Galea kontra Mario Galea" proprju fil-Qorti Civili (Sezzjoni tal-Familja) (vide l-anness "Dok. MG2") u hemm kif gja inghad talbet ghal inibizzjoni shiha fil-konfront tad-diversi kumpanniji hemm u hawn premessi li lkoll m`humiex intimati f`din il-procedura).

16) Illi ghalhekk dina l-Onorabbli Qorti m`ghandhiex tippermetti li kwistjoni li m`ghandhiex l-gheruq taghha fid-dritt socjetarju tissokta.

17) Illi inoltre, kif inghad, fir-rikors promotur taghha r-rikorrenti Dorita (Dolores Rita) Galea ssemmi diversi lmenti fir-rigward ta` diversi kumpanniji ohra li lkoll m`humiex intimati f`din il-procedura. Dan huwa ghal kollox irrittuali u dina l-Onorabbli Qorti m`ghandhiex tiehu konjizzjoni ta` tali ilmenti (li ghal kull buon fini u minghajr pregudizzju xorta wahda huma kkontestati). Fl-umli fehma tal-esponenti procediment ta` din ix-xorta m`huwiex intiz sabiex iservi bhala mezz kif minnu tinkiseb kemm jista` jkun informazzjoni ghall-uzu fi proceduri ohrajn.

ECCEZZJONIJIET

1. Illi preliminarjament, dina l-Onorabbli Qorti jonqosha l-gurisdizzjoni biex tisma dan il-kaz - kwistjonijiet ta` inkwiet matrimonjali bejn konjugi ghandhom jigu trattati fil-qorti kompetenti, cioe` mill-Qorti Civili (Sezzjoni tal-Familja) u mhux minn dina l-Onorabbli Qorti taht il-pretest tal-azzjoni kontemplat taht l-artikolu 402 tal-Att Dwar il-Kumpanniji.

2. Illi t-talbiet rikorrenti kollha interposti mir-rikorrenti Dorita (Dolores Rita) Galea ghandhom jigu rigettati immedjatament bl-ispejjez stante li hekk kif jirrizulta u okkorrendo hekk kif jigi ppruvat ulterjorment, l-istess rikorrenti m`hijiex registrata bhala azzjonista fis-socjeta` Random Consulting Limited (vide l-anness Dok. "MG1" u

"MG3") u ghalhekk jonqosha l-interess guridiku li tadixxi lil dina l-Onorabbli Qorti taht l-artikolu 402 tal-Att Dwar il-Kumpanniji.

3. Illi minghajr pregudizzju ghas-sueccepit, fil-kaz tal-ewwel talba attrici, dina ghandha tigi michuda, stante li ma jistghux jinghataw ordnijiet pendente lite fl-isfond ta` talba msejsa fuq id-disposizzjonijiet tal-Artikolu 402 tal-Att Dwar il-Kumpanniji. Fl-istat tad-dritt kif inhu llum, dina l-Onorabbli Qorti hija prekluzza milli taghti ordnijiet pendente lite kif trid ir-rikorrenti. Huwa biss meta l-Qorti, ghax tkun tal-fehma li l-ilment ikun bazat sewwa u li jkun gust u ekwu, cioe` wara li jirrizultalha li l-intimati jew min minnhom jkunu ghamlu atti oppressivi, ingusti u diskriminatorji bi pregudizzju u ghad-detriment tar-rikorrenti li tista` taghti ordnijiet fl-isfond ta` talba msejsa fuq id-disposizzjonijiet tal-Artikolu 402 tal-Att Dwar il-Kumpanniji.

4. Illi inoltre minghajr pregudizzju ghas-sueccepit, fil-kaz tal-ewwel talba attrici, dina ghandha tigi michuda stante illi n-nomina ta` amministratur provvizorju pendente lite ma tistax issir fl-isfond ta` talba msejsa fuq id-disposizzjonijiet tal-Artikolu 402 tal-Att Dwar il-Kumpanniji. Dan ghaliex, it-talba ghall-hatra ta` amministratur provvizorju, f`dan il-kaz, qed issir espressament fl-isfond tal-Artikolu 402 tal-Kap.386 u mhix qed ssir fl-isfond ta` rikors ta` stralc, wahedha teskludi l-possibilita` li din il-Qorti tkun tista` taghmel ordni ghall-hatra ta` amministratur provvizorju.

5. Illi minghajr pregudizzju ghas-sueccepit, l-allegazzjonijiet kollha esposti fir-rikors promotur, komprizi dawk dwar tmexxija irregolari, oppressiva, diskriminatorja u abuziva, huma kollha michuda bhala infondati fil-fatt u fid-dritt, u dana kif ser jigi pruvat ahjar waqt it-trattazzjoni tal-kawza.

6. Illi minghajr pregudizzju ghas-sueccepit, l-allegazzjoni li l-eccipjenti wettqu jew ser jwettqu atti ta` pregudizzju mhux gust fil-konfront tar-rikorrenti hija wkoll michuda bhala infondata fil-fatt u fid-dritt, anzi bil-kontra, il-pregudizzju mhux gust qed jigi rrekat mir-rikorrenti, u dana kif ser jigi pruvat ahjar waqt it-trattazzjoni tal-kawza.

7. *Illi minghajr pregudizzju ghas-sueccipit, f` kull kaz, ir-rikorrenti ghandha tipprova sal-grad rikjest mil-ligi dak kollu minnha allegat u pretiz fil-procedimenti odjerni.*

8. *Illi minghajr pregudizzju ghas-suecceptit, it-talbiet rikorrenti huma inforndati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez.*

Rat id-dokumenti li kienu prezentati mar-risposta.

Rat illi fl-udjenza tad-19 ta` Novembru 2020, il-partijiet inghataw direzzjoni fis-sens illi kellhom jittrattaw it-tieni eccezzjoni peress li min-natura taghha kienet ta` natura preliminari.

Semghet ix-xieghda tar-rikorrenti fl-istess udjenza.

Rat illi fl-istess udjenza kien dikjarat mill-partijiet illi, limitatament ghall-fini ta` prova tat-tieni eccezzjoni, kienu sejrin joqghodu fuq l-atti. Kien dikjarat ukoll li ma kienx hemm kontestazzjoni dwar il-fatt illi l-ishma tal-kumpannija ntimata ghalkemm registrati kollha f`isem l-intimat l-iehor kienu jaghmlu parti mill-komunjoni tal-akkwisti ta` bejn ir-rikorrenti u dak l-intimat li huwa zewgha.

Rat illi l-kawza thalliet ghal provvediment ghal-lum bil-fakolta` li l-partijiet jipprezentaw noti ta` osservazzjonijiet.

Rat in-noti ta` osservazzjonijiet.

Rat l-atti l-ohra.

II. It-tieni (2) eccezzjoni

Fit-tieni eccezzjoni qieghed ikun except li r-rikorrenti ma tistax tipproponi din l-azzjoni abbazi tal-Art 402 tal-Kap 386 billi m`ghandhiex l-interess guridiku rikjest mil-ligi sabiex taghmel dan, stante li ma tikkwalifikax bhala "*membru*" tal-kumpannija ntimata.

III. Provi

Il-fatti li johorgu mill-provi u li ghandhom rilevanza ghall-fini tal-eccezzjoni huma :-

- 1) Illi r-rikorrenti u l-intimat Mario Galea izzewgu Malta fit-3 ta` Ottubru 1998.**
- 2) Illi l-komunjoni tal-akkwisti bejniethom qatt ma giet eskluza miz-zwieg taghhom.**
- 3) Illi s-socjeta` ntimata giet registrata wara z-zwieg tal-konjugi Galea, u cioe` fis-6 ta` Marzu 2009.**
- 4) Illi fid-data tar-registrazzjoni tas-socjetal-uniku azzjonista kien Mario Galea bl-ishma kollha registrati f` ismu.**

IV. Konsiderazzjonijiet

1. Dritt

Il-qorti sejra taghmel riferenza fit-test bl-Ingliz ghal dawk id-disposizzjonijiet tal-Kap 386 illi fil-fehma taghha huma rilevanti ghall-fini tal-provvediment odjern. Sejra ticita t-test tal-ligi bl-Ingliz unikament ghall-fini komparattiv propju ghaliex `il quddiem sejra tirreferi ghal-ligi u l-gurisprudenza Ingliza.

Ir-rikorrenti ntavolaw l-azzjoni taghhom abbazi tal-Art 402 tal-Kap 386 illi fl-ewwel subartikolu jghid illi *any member of the company who complains ...*

"Member" huwa definit fl-ewwel subartikolu tal-Art 2 tal-Kap 386 fis-sens illi *"except where otherwise specifically defined, means a shareholder of a company and a partner in any other commercial partnership."*

Fl-istess subartikolu, **"shareholder"** huwa definit bhala *"a person entered in the register of members of a company pursuant to article 123 or the bona fide holder of a share warrant referred to in article 121"*

Ghall-fini tal-Art 402, il-legislatur Malti ried iwessa` t-tifsira ta` **"member"** ghall-fini ta` dik id-disposizzjoni billi **fis-subartikolu (6)** zied illi *"member" includes a person entitled at law to represent the interests of a deceased member, a person to whom shares in the company have lawfully devolved by way of testate or intestate succession, and a trustee, as defined in article 127, who holds shares in the company.*

L-intimati qeghdin jikkontendu li r-rikorrenti ma tikkwalifikax bhala *"member"* u ghalhekk m`ghandhiex interess guridiku ghaliex hija prekluzza milli tressaq azzjoni skont l-Art 402.

Min-naha taghha, ir-rikorrenti tghid li ghandha *locus standi* ghaliex hija s-sid tan-nofs tal-ishma tas-socjeta` ntimata li huma registrata fl-isem ta` zewgha, billi dawk l-ishma jaghmlu parti mill-komunjoni tal-akkwisti taghha ma` zewgha.

Fis-sentenza taghha tad-9 ta` Marzu 2007 fil-kawza **Vella vs Vella Brothers Limited et**, il-Qorti tal-Appell qalet espressament illi l-Art 402 kien imfassal fuq l-Art 459 tal-Companies Act Ingliza tal-1985. Issa l-Art 459 thassar bl-Art 994 tal-Companies Act Ingliza tal-2006. Pero` id-disposizzjoni baqghet l-istess. Din il-qorti sejra tqiegheed flimkien l-Art 402 taghna u l-Art 994 tal-ligi Ingliza ghal finijiet komparattivi.

L-Art 402 tal-Kap 386 jaqra :-

(1) Any member of a company who complains that the affairs of the company have been or are being or are likely to be conducted in a manner that is, or that any act or omission of the company have been or are or are likely to be, oppressive, unfairly discriminatory against, or unfairly prejudicial, to a member or members or in a manner that is contrary to the interests of the members as a whole, may make an application to the court for an order under this article.

(2) Where the Registrar has received a report on a company under article 410 and it appears to him that the company`s affairs are being or have been conducted in a manner falling within the meaning of subarticle (1), he may make an application to the court for the issue of an order under this article.

(3) If on an application made in terms of subarticle (1) or (2), the court is of the opinion that the complaint is well-founded and that it is just and equitable to do so, the court may make such order under such terms as it thinks fit –

(a) regulating the conduct of the company`s affairs in the future ; or

(b) restricting or forbidding the carrying out of any proposed act ; or

(c) requiring the company to do an act which the applicant has complained it has omitted to do ; or

(d) providing for the purchase of the shares of any members of the company by other members of the company or by the company itself and, in the case of a purchase by the company, for the reduction accordingly of the company`s issued share capital ; or

(e) directing the company to institute, defend, continue or discontinue court proceedings, or authorising a member or members of the company to institute, defend, continue or discontinue court proceedings in the name and on behalf of the company ; or

(f) providing for the payment of compensation by such person as may have been found by the court responsible for loss or damage suffered as a result of the act or omission complained of, to the person suffering the said loss or damage ; or

(g) *dissolving the company and providing for its consequential winding up.*

(4) *When an order is made for the dissolution of a company in terms of subarticle (3)(g), the company shall be deemed to have been dissolved on the date when the order is made and the provisions of Sub-Titles I and III of Title II of Part V of this Act regulating the winding up of companies shall apply.*

(5) *An order made under this article may require a company not to make any amendment, or to make such amendment as may be required, in its memorandum or articles.*

(6) *In this article, the term "member" includes a person entitled at law to represent the interests of a deceased member, a person to whom shares in the company have lawfully devolved by way of testate or intestate succession, and a trustee, as defined in article 127, who holds shares in the company.*

L-Art 994 tal-Companies Act Ingliza 2006 jaqra :-

1) *A member of a company may apply to the court by petition for an order under this Part on the ground—*

(a) *that the company`s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself) , or*

(b) *that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.*

(2) *The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as they apply to a member of a company.*

(3) *In this section, and so far as applicable for the purposes of this section in the other provisions of this Part, "company" means—*

(a) *a company within the meaning of this Act, or*

(b) a company that is not such a company but is a statutory water company within the meaning of the Statutory Water Companies Act 1991.

Ghall-fini ta` kompletezza ta` analizi, trid issir riferenza ukoll ghall-**Art 112 tal-Companies Act Ingliza 2006** li jaghti tifsira ta` "member". Id-disposizzjoni taqra hekk –

(1) The subscribers of a company`s memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.

2. Dottrina

Qabel ma tesprimi ruhha dwar il-mertu tal-eccezzjoni, il-qorti sejra, **ghall-fini ta` kompletezza**, tirreferi wkoll ghal kif id-dottrina Maltija u dik Ingliza, **b`mod generali**, ittrattaw il-kwistjoni ta` min ghandu jedd jittenta l-azzjoni skont l-Art 402 (fil-kuntest Malti) u skont l-Art 994 (fil-kuntest Ingliz).

In kwantu ghad-dottrina Maltija, **Andrew Muscat** fil-"**Principles of Maltese Company Law**" (Vol Three – Second Edition - MUP) Pg 1298 et seq ighid hekk –

The requirement for a "member" to have been entered into the register of members can well prove to be a stumbling block to the successful exercise of the action ...

Art 402(6) does not however cater for the situation where shares have been transferred or transmitted by operation of law other than by intestate succession. Thus, for example, in the case of a division of a company, if shares held by the company to be divided are allocated to a particular recipient company, that recipient company will need to be registered in the register of members of the company in which the

shares are held if such recipient company is to have locus standi to file an action under article 402.

In kwantu ghad-dottrina Ingliza, **Mayson, French & Ryan** fil-ktieb tagghom "**Company Law**" (26th Edition – OUP) Pg 565 ighidu hekk –

Under CA 2006, s. 994(1) a petition for relief of unfairly prejudicial conduct of a company`s affairs may be presented by a member of the company ...

A person to whom shares in a company have been transferred or have been transmitted by operation of law but who is not a member of the company (because of not being on the register of members) is treated as a member for the purposes of CA 2006 s.994(1) and reference to a members or members must be construed accordingly [s 994(2)].

The word "transferred" in s 994(2) requires at least that a proper instrument of transfer should have been executed and delivered to the transferee or the company in respect of shares in question. It is not sufficient that there is an agreement for transfer (Re c Company (No 003160 of 1986) [1986] BCLC391 ; Re Quickdome Ltd (1988) BCLC 370).

The phrase "transmitted by operation of law" in s 994(2) refers to a legal process by which the legal title passes and does not cover the creation of an equitable interest for example under a trust (Re a Company (No 007828 of 1985) (1985) 2 BCC 98,951).

A nominee shareholder, holding shares as a bare trustee, may petition under s 994 because the interests of such a shareholder include the economic and contractual interests of the beneficial owners of the shares (Atlasview Ltd vs Brightview Ltd (2004) EWHC 1056 (Ch) (2004) 2 BCLC 191.

Tal-istess fehma huma **Gower and Davies** fil-"**Principles of Modern Company Law**" (Eight Edition – Sweet & Maxwell) Pg 682 u **Sealy** fil-"**Cases and Materials in Company Law**" (Ninth Edition – OUP) Pg. 651-652.

3. **Risultanzi**

Ghall-fini tal-azzjoni tal-lum, kif promossa mir-rikorrenti, il-*locus standi* ta` r-rikorrenti ma jistax jigi determinat biss abbazi tat-tifsira ta` *member* li tirrizulta fl-Art 2(1) tal-Kap 386 (*except where otherwise specifically defined, means a shareholder of a company and a partner in any other commercial partnership*) jew abbazi tat-tifsira ta` *shareholder* fl-istess Art 2(1) tal-Kap 386 (*means a person entered in the register of members of a company pursuant to article 123 or the bona fide holder of a share warrant referred to in article 121*) jew abbazi tat-tifsira ta` *member* skont l-Art 402(6) tal-Kap 386 (*includes a person entitled at law to represent the interests of a deceased member, a person to whom shares in the company have lawfully devolved by way of testate or intestate succession, and a trustee, as defined in article 127, who holds shares in the company*).

Il-qorti tghid illi ghall-iskop tal-azzjoni skont l-Art 402, bl-*includes* fis-subartikolu (6), il-legislatur ried jestendi d-dritt ta` azzjoni ghall-persuni ndikati fis-subartikolu (6) b`zieda ma` dawk li jikkwalifikaw fit-tifsira ta` *member* u *shareholder* skont l-Art 2(1).

L-użu tal-frazi *includes* minflok il-frazi *means* ma kenitx mahsuba sabiex tiftah il-bieb berah ghal kulhadd illi jittenta l-azzjoni skont l-Art 402 fuq il-pretest illi l-frazi *includes* ma taghtix l-idea ta` "an exhaustive provision of law".

Fl-istess waqt, m`ghandhomx jigu eskluzi milli jressqu l-azzjoni persuni li ghandhom jedd.

Lanqas m`ghandu jkun li, b`interpretazzjoni restrittiva u stretta ta` *member* u ta` *shareholder*, persuni li ghandhom jedd jigu prekluzi milli jmexxu bl-azzjoni.

Il-qorti tkompli tesprimi r-*ratio* taghha kif gej.

Ma kienx il-hsieb tal-legislatur li jeskludi mill-azzjoni skont l-Art 402 persuna, bhar-rikorrenti, li tigi l-mara ta` *member* u *shareholder*,

ghar-rigward ta` ishma ta` kumpannija, li jaghmlu parti mill-komunjoni tal-akkwisti, kif huwa l-kaz tal-lum.

Fil-kuntest tal-kawza tal-lum, u tenut kont tad-disposizzjonijiet ta` dritt u tad-dottrina li ghalihom saret riferenza aktar kmieni, tajjeb jinghad illi punt ta` sostanza li jaghzel id-dritt Malti minn dak Ingliz huwa r-regim tal-komunjoni tal-akkwisti fis-sens illi fid-dritt Ingliz ma hemmx istitut bhal dak tal-komunjoni tal-akkwisti illi fid-dritt Malti huwa l-pern tar-relazzjonijiet patrimonjali bejn il-konjugi fiz-zwieg. Ghall-fini tal-kwistjoni mertu ta` dan il-provvediment, il-qorti ma tistax twarrab fil-genb il-komunjoni tal-akkwisti, bhal donnu dak l-istitut m`ghandux ighodd jew m`ghandux ikollu rilevanza ghall-iskop tal-Kap 386 li huwa s-sies tad-dritt soċjetarju Malti.

Del resto lanqas il-legislatur ma ried li jigri hekk.

Infatti skont **I-Art 123(2) tal-Kap 386** –

Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this Act, be treated as a single member ; and, unless otherwise provided in the memorandum or articles, the name of only one of such persons shall be entered in the register of members. Such person shall be elected by the joint holders and shall for all intents and purposes be deemed vis-à-vis the company to be the member of the company in respect of all the shares so held.

Il-qorti tqis illi din id-disposizzjoni tghodd ghall-mizzewgin, fejn wahda minnhom biss tkun registrata bhala azzjonista, u fejn l-ishma jkunu jappartjenu lill-komunjoni tal-akkwisti, kif jirrizulta li huwa l-kaz odjern.

Ghalhekk fil-kaz tal-lum l-ishma huma kollha registrati f`isem Mario Galea, ghall-finijiet u effetti kollha tal-ligi, dawk jappartjenu ghal nofs lir-rikorrenti u in kwantu ghal nofs lill-intimat Mario Galea, stante li jaghmlu parti mill-komunjoni tal-akkwisti ta` bejniethom.

Del resto l-**Art 1320(d) tal-Kap 16** jghid illi fil-komunjoni tal-akkwisti jidhlu *kull beni akkwistati bi flus jew hwejjeg ohra li jkunu*

gejjin mill-akkwisti wkoll jekk l-akkwist ta` dawk il-beni ikun sar f` isem parti wahda mill-mizzewgin.

Ladarba l-ishma jaghmlu parti mill-komunjoni tal-akkwisti, ghall-fini tal-Kap 386, ghandhom jitqiesu bhala entita` wahda indiviza.

Ghalhekk ir-rikorrenti ghandha titqies diga` bhala *member ope legis*.

Ghall-fini tal-Art 402, ir-rikorrenti m`ghandhiex ghalfejn tkun inserita fir-registru tal-membri tal-kumpannija sabiex tkun tista` tmexxi bl-azzjoni.

De lege condenda dak previst fil-Kap 16 ghall-komunjoni tal-akkwisti ghandu jghodd ghall-Kap 386.

Provvediment

Ghar-ragunijiet kollha premessi, il-qorti qeghda tichad it-tieni eccezzjoni preliminari tal-intimati, spejjez ghall-intimati.

Tordna l-prosegwiment tal-kawza.

**Onor. Joseph Zammit McKeon
Imhallef**

**Amanda Cassar
Deputat Registratur**